



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 512

[CMS-5527-CN]

RIN 0938-AT89

Medicare Program; Specialty Care Models to Improve Quality of Care and Reduce Expenditures; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the September 29, 2020 **Federal Register** entitled “Medicare Program; Specialty Care Models To Improve Quality of Care and Reduce Expenditures,” which established the Radiation Oncology Model and the End-Stage Renal Disease Treatment Choices Model.

DATES: Effective date: This correcting document is effective on [insert date of publication in the **Federal Register**.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020-20907 of September 29, 2020 (85 FR 61114), there were a number of technical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document published September 29, 2020. Accordingly, the corrections are effective November 30, 2020.

II. Summary of Errors

On page 61159, in our discussion of the entitled “Episode Length” there is an error in an in-text citation to the proposed rule, so 84 FR 3499 is corrected to 84 FR 34499, along with the correct link to the proposed rule.

On pages 61289, 61292, 61295, 61296, 61297, 61319, 61327, 61328, 61329, 61349, 61350, 61353, and 61354, we made errors in the numbering and reference numbers for several tables.

On pages 61357, 61358, and 61359 in our discussion of the effects on Radiation Oncology (RO) Participants, we made errors in wage-related information.

On page 61359, in our discussion of the Regulatory Flexibility Act requirements for the Radiation Oncology Model, we made a calculation error regarding the distribution of payment changes. Under Medicare FFS, physician group practices (PGPs) are largely paid through the Medicare Physician Fee Schedule (PFS) for radiotherapy services while hospital outpatient departments (HOPDs) are paid through the Outpatient Prospective Payment System (OPPS). Unit-cost increases under the PFS are projected to be lower than under the OPPS. Therefore, the RO Model will affect payments to RO participants that are PGPs and HOPDs differentially over time through the use of a site neutral update factor. The referenced calculations are revised to properly value this effect.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. § 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA (5 U.S.C. § 553(d)) and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication

of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in the effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment rulemaking processes are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographic errors in the Medicare Program; Specialty Care Models To Improve Quality of Care and Reduce Expenditures final rule (the Specialty Care Models final rule), but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this corrective document is intended to ensure that the information in the Specialty Care Models final rule accurately reflects the policies adopted in that document.

In addition, even if this was a rulemaking to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule would be contrary to the public interest because it is in the public's interest for model participants to receive appropriate payments in as timely a manner as possible and to ensure that the Specialty Care Models final rule accurately reflects our methodologies and policies as of the date they take effect and are applicable.

Furthermore, such procedures would be unnecessary, as we are not altering the implementation of the models or the way participants in the models will perform, but rather we

are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the Specialty Care Models final rule accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2020-20907 of September 29, 2020 (85 FR 61114), make the following corrections:

1. On page 61159, first column, last paragraph, lines 1 and 2, the reference “(84 FR 3499)” is corrected to read “(84 FR 34499)”.
2. On page 61289, lower one-fourth of the page, the table title “TABLE 11: PROPOSED HDPA SCHEDULE” is corrected to read “TABLE 15: PROPOSED HDPA SCHEDULE”.
3. On page 61292, in the middle of the page, the table title “TABLE 11.a: HDPA SCHEDULE” is corrected to read “TABLE 15.a: HDPA SCHEDULE”.
4. On page 61295, third column, last partial paragraph, line 1, the reference “Table 12” is corrected to read “Table 16”.
5. On page 61296--
 - a. Top of the page, the table title “TABLE 12: PROPOSED ETC MODEL SCHEDULE OF MEASUREMENT YEARS AND PPA PERIODS” is corrected to read “TABLE 16: PROPOSED ETC MODEL SCHEDULE OF MEASUREMENT YEARS AND PPA PERIODS”.
 - b. Lower half of the page, second column, partial paragraph, line 2, the table reference “Table 12.a” is corrected to read “Table 16.a”.
6. On page 61297, the table title, “TABLE 12.a: ETC MODEL SCHEDULE OF MEASUREMENT YEARS AND PPA PERIODS” is corrected to read “TABLE 16.a: ETC MODEL SCHEDULE OF MEASUREMENT YEARS AND PPA PERIODS”.

7. On page 61319, the table title, “TABLE 13: PROPOSED SCORING METHODOLOGY FOR ASSESSMENT OF MEASUREMENT YEARS 1 AND 2 ACHIEVEMENT SCORES AND IMPROVEMENT SCORES ON THE HOME DIALYSIS RATE AND TRANSPLANT RATE” is corrected to read “TABLE 17: PROPOSED SCORING METHODOLOGY FOR ASSESSMENT OF MEASUREMENT YEARS 1 AND 2 ACHIEVEMENT SCORES AND IMPROVEMENT SCORES ON THE HOME DIALYSIS RATE AND TRANSPLANT RATE”.

8. On page 61327, the table title, “TABLE 14: PROPOSED FACILITY PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE” is corrected to read “TABLE 18: PROPOSED FACILITY PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE”.

9. On page 61328--

a. Top of the page, first column, first full paragraph, line 8, the phrase “Table 14.a” should read “Table 18.a”.

b. Middle of the page, the table title “TABLE 14a: FACILITY PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE” is corrected to read “TABLE 18.a: FACILITY PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE”.

c. In the third column, first full paragraph, line 1, the table reference, “Table 15” is corrected to read “Table 19”.

10. On page 61329--

a. Top of the page, the table title, “TABLE 15: PROPOSED CLINICIAN PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE” is corrected to read “TABLE 19: PROPOSED CLINICIAN PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE”

b. Top half of page (after Table 15), second column, partial paragraph, line 5, the table

reference “Table 15.a” is corrected to read “Table 19.a”.

c. Lower half of the page, the table title, “TABLE 15a: CLINICIAN PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE” is corrected to read “TABLE 19.a: CLINICIAN PERFORMANCE PAYMENT ADJUSTMENT AMOUNTS AND SCHEDULE”.

11. On page 61349, first column, first full paragraph, last line, the table reference “Table 2” is corrected to read “Table 21”.

12. On page 61350--

a. First column, last full paragraph, line 1, the table reference “Table 1” is corrected to read “Table 20”.

b. Second column; first paragraph, line 35, the table reference “Table 1” is corrected to read “Table 20”.

13. On page 61351, top of the page, the table title, “TABLE 1. ESTIMATES OF MEDICARE PROGRAM SAVINGS (MILLIONS \$) FOR RADIATION ONCOLOGY MODEL (Starting January 1, 2021)” is corrected to read “TABLE 20: ESTIMATES OF MEDICARE PROGRAM SAVINGS (MILLIONS \$) FOR RADIATION ONCOLOGY MODEL (Starting January 1, 2021)”

14. On page 61353, first column, first paragraph--,

a. Line 1, the table reference “Table 2” is corrected to read “Table 21”.

b. Line 16, the table reference “Table 2” is corrected to read “Table 21”.

15. On page 61354--

a. Top of the page, the table title, “TABLE 2. ESTIMATES OF MEDICARE PROGRAM SAVINGS (ROUNDED \$M) FOR ESRD TREATMENT CHOICES MODEL” is corrected to read “TABLE 21: ESTIMATES OF MEDICARE PROGRAM SAVINGS (ROUNDED \$M) FOR ESRD TREATMENT CHOICES MODEL”.

b. Lower half of the page, first column, last paragraph, line 4, the table reference “Table

2” is corrected to read “Table 21”.

16. On page 61355, first column, first full paragraph—

- a. Line 9, the table reference, “Table 2” is corrected to read “Table 21”.
- b. Line 21, the table reference, “Table 2” is corrected to read “Table 21”.

17. On page 61357, third column--

- a. Last paragraph, line 19, the figure “\$19.40” is corrected to read “\$20.50”
- b. Last paragraph, line 21, the figure “\$38.80” is corrected to read “\$41.00”
- c. Last footnote (footnote 175), line 2, the figure “\$19.40” is corrected to read “\$20.50”.

18. On page 61358—

a. First column, in the first partial paragraph,

- (1) Line 2, the figure “\$183.14” should be replaced with “\$193.52”
- (2) Line 4, the figure “\$173,983” should be replaced with “\$183,844.00”, “
- (3) Line 5, the figure \$183.14” should be replaced with “\$193.52”
- (4) Line 6, the figure “\$173,983” should be replaced with “\$183,844.00”.

b. First column, fourth full paragraph—

- (1) Line 12, the figure “\$1,743.07” is corrected to read “\$1,845.00”.
- (2) Line 18, the figure “\$1,655,916.50” is corrected to read “\$1,752,750.00”.

c. Second column, first full paragraph--

- (1) Line 11, the figure “\$1,093.26” is corrected to read “\$1,106.94”.
- (2) Line 13, the figure “\$3,170,454.00” is corrected to read “\$3,210,126.00”.
- (3) Line 14, the phrase “\$1,093.269/participant” is corrected to read

“\$1,106.94/participant”.

(4) Line 20, the figure “\$3,019.47” is corrected to read “\$3,145.46” and “\$1,093.26” is corrected to read \$1,106.94”.

(5) Line 21, the figure “\$183.14” is corrected to read “\$193.52”.

(6) Line 23, the figure “\$1,743.07” is corrected to read “\$1,845.00”.

(7) Line 25, the figure “\$2,868,496.50” is corrected to read “\$2,988,187.00”.

(8) Line 27 the figure “\$2,131,350.00” is corrected to read “\$2,158,533.00”.

(9) Line 30, the figure “\$4,999,846.50” is corrected to read “\$5,146,720.50”.

19. On page 61359--

a. First column, first full paragraph—

(1) Line 4, the phrase “reduced by 6.0” is corrected to read “increased by 1.6”.

(2) Line 6 the phrase “reduced by 4.7” is corrected to read “reduced by 8.7”.

(3) Line 22, the figure “\$1,743.06” is corrected to read “\$1,845.00”.

(3) Line 23 to 26, the sentence “We assume that our estimate for the submission of quality measures remains an accurate estimate at \$310.40 per year.” is corrected to read, “We revise our estimate for the submission of quality measures to an estimated \$328.00 per year.”

(5) Line 28, “\$1,432.67” is corrected to read “\$1,517.00”, and “\$38.80” is corrected to read “\$41.00”.

c. Second column—

(1) First full paragraph—

(a) Line 6, the figure “\$1,093.26” is corrected to read “\$1,106.94”.

(b) Line 8, the figure “\$183.14” is corrected to read “\$193.52”.

(c) Line 16, the figure “\$95.90” is corrected to read “\$97.10”.

(d) Line 28, the parenthetical expression (“\$1,093.26 = (\$95.20 * 11.4)”) is corrected to read “(\$1,106.94 = (\$95.20 * 11.4))”.

(e) Line 31, the figure “\$183.14” is corrected to read “\$193.52”.

(2) Last footnoted paragraph (footnote 181), line 2, the figure “\$47.95” is corrected to read “\$48.55”.

20. On page 61361, third column, last paragraph, line 4, the phrase “Tables E3 and E4” is corrected to read “Tables 22 and 23”.

21. On page 61362, top of the page—

a. The table title, “TABLE 3: ACCOUNTING STATEMENT ESTIMATED IMPACTS FOR THE RADIATION ONCOLOGY MODEL” is corrected to read “TABLE 22: ACCOUNTING STATEMENT ESTIMATED IMPACTS FOR THE RADIATION ONCOLOGY MODEL”.

b. The table title, “TABLE 4: ACCOUNTING STATEMENT ESTIMATED IMPACTS FOR END STAGE RENAL DISEASE (ESRD) TREATMENT CHOICES MODEL” is corrected to read “TABLE 23: ACCOUNTING STATEMENT ESTIMATED IMPACTS FOR END STAGE RENAL DISEASE (ESRD) TREATMENT CHOICES MODEL”

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Department,

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